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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

DAVID CUENLLAS, Plaintiff and Appellant, v. VRL INTERNATIONAL, LTD., Defendant and Respondent.	B138624 (Super. Ct. No. BC196681)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard P. Kalustian, Judge. Affirmed.

Lawrence D. Murray and Troy Hanson for Plaintiff and Appellant.

Daar & Newman, Jeffery J. Daar and David Daar for Defendant and Respondent.

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* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication as to part I only.

Plaintiff David Cuenllas appeals from an order quashing service of summons in favor of defendant VRL International, Ltd. (respondent).

In the published portion of this opinion, section I, we address our jurisdiction to hear the appeal. We conclude that service of a minute order which notes the date of entry in the order but which is not *entitled* "notice of entry" does not trigger the 60-day time period for filing a notice of appeal provided for in California Rules of Court, rule 2(a). (All further references will be to the Cal. Rules of Court unless otherwise noted.) Rather, the 180-day time period contained within that rule applies, meaning this appeal was timely noticed.

In the unpublished portion of this opinion, section II, we address the merits of the appeal and we affirm the trial court.

I. WAS THE APPEAL TIMELY NOTICED?

FACTS

Appellant, a resident of California, filed this action against multiple defendants for injuries he sustained in a jet ski accident in the ocean off the Bahamas. Appellant was on a business trip at the time and was staying as a guest at the Breezes Hotel in Nassau. He had rented the jet ski from an operator adjacent to the hotel property. Appellant filed an amendment to the complaint designating "BREEZES HOTEL as Defendant DOE 11." Process was then served on a law firm in the Bahamas, "Higgs & Kelly the Registered Office of [respondent] (doing business as Breezes Hotel)."

Respondent specially appeared and moved to quash service of summons for lack of personal jurisdiction.

On October 20, 1999, the trial court granted respondent's motion to quash with a minute order of the same date which contains the following notation: "MINUTES ENTERED 10/20/99 COUNTY CLERK." It also states that a copy of

the minute order was sent to each counsel of record that same date. The minute order did *not* reflect that a formal order be prepared and presented to the court for signature.

On October 29, 1999, counsel for appellant served a document titled "Judgment of Dismissal" on all counsel of record. It states that the court took the motion to quash under submission on October 13, 1999, and granted it on October 20, 1999.

The parties disputed the manner of "Judgment" or order that should be entered to formally resolve the matter. Finally, on November 23, 1999, the court signed and entered a formal order, drafted by respondent's counsel, granting the motion to quash.

On January 20, 2000, appellant filed a notice of appeal which states that appellant "appeals . . . from the Judgement [*sic*] entered on November 23, 1999. . . ."

After the appeal had been perfected, respondent filed a motion to dismiss on the basis that the notice of appeal was untimely, more than 60 days from date of entry of the minute order, October 20, 1999. After receipt of opposition and a reply, we denied the motion.

Respondent's brief, in addition to discussing the merits, again urges that we are without jurisdiction to consider this appeal. We have readdressed the issue and we reach the same conclusion as before: that the appeal was timely noticed.

DISCUSSION

California Rules of Court, rule 2(a) provides that the notice of appeal "shall be filed on or before the earliest of the following dates: (1) 60 days after the date of mailing by the clerk of the court of a document *entitled* 'notice of entry' of

judgment; (2) 60 days after the date of service of a document *entitled* 'notice of entry' of judgment by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; *or* (3) *180 days after the date of entry of the judgment.*" (Italics added.)

California Rules of Court, rule 2(b)(2) states: "The date of entry of an appealable order which is entered in the minutes shall be the date of its entry in the permanent minutes, *unless such minute order as entered expressly directs that a written order be prepared, signed, and filed,* in which case the date of entry shall be the date of filing of the signed order." (Italics added.) Thus, "[a]n unsigned minute order can form the basis of an appeal, unless it specifically recites that a formal order is to be prepared. . . . [Citations.]" (*In re Marriage of Lechowick* (1998) 65 Cal.App.4th 1406, 1410, criticized on another point in *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1195-1196, fn. 11.)

Significantly, rule 2(b) also states: "The fact that a written order is to be prepared under the provisions of rule 391 or a similar local rule *does not* constitute an express direction in the minute order that a written order be 'prepared, signed, and filed' within the meaning of (2) above." (Italics added.) As recognized in *Hughey v. City of Hayward* (1994) 24 Cal.App.4th 206, 209, the plain language of rule 2(b) "requires us to conclude that even though preparation of a written order is now contemplated in the ordinary course of events, the date of entry remains the date the order is entered in the permanent minutes unless the minute order expressly directs the preparation of a written order." Here, that date was October 20, 1999.

The court in *Hughey* opined that the apparent contradictory provisions within rule 391 and rule 2(b)(2) create a potential "trap for the unwary. Upon rendition of a minute order, a careless attorney, knowing that there will be a subsequent written order, might assume -- not unreasonably -- that the time for

appeal will begin to run after rendition of the written order. In fact, the time will have commenced to run upon notice of entry of the minute order. The result could be a failure to file a timely notice of appeal." (*Id*. at pp. 209-210.) We agree with this assessment. But here the trap did not close before the notice of appeal was filed.

California Rules of Court, rule 2(a), provides 180 days within which to notice an appeal *unless* a document notifying appellant of entry of the judgment or order is served either by the court or counsel and is titled "notice of entry." The minute order of October 20, 1999, served on all parties that same date, is not so titled. Nor was the document served by respondent on October 29 so titled. Thus, appellant had 180 days from October 20, 1999, to file his notice of appeal. The notice of appeal was timely filed on January 20, 2000, 92 days after entry of the minute order.

II. THE MERITS OF THE APPEAL

FACTS

In support of its motion to quash, respondent filed a declaration executed by Cameron Burnet, ". . . the Senior Vice President of VRL INTERNATIONAL, LTD. t/a 'BREEZES' incorrectly sued . . . as 'BREEZES HOTEL. . . .'" Burnet declared that respondent "owns the registered trademark 'BREEZES'"; is incorporated in the Cayman Islands with its principal place of business in the Bahamas; is not licensed or registered to conduct business in California; has never entered into any contract in California; does not pay taxes in the state; has no business or office or employees in California; has never owned or leased property in California; has never maintained a telephone or telefax number or address in California; has never designated an agent for service of process in California; has no officers or directors residing in California; has never maintained

business records in California; has never initiated litigation in California; and did not consent to personal jurisdiction in California.

Appellant opposed the motion with his own declaration, the declaration of Erika Hoelsken, an employee of appellant's counsel, and by lodging the transcript of a deposition taken of Melody Lewis.

Lewis testified that since 1994 she has worked out of her California home office as a sales manager for SuperClubs Resorts, a Florida corporation. She identified SuperClubs as the exclusive agent in the United States for soliciting business on behalf of various "Breezes" resorts. Her position is "sales manager . . . someone who basically instigates business for a company." She deals only with travel agencies in her territory, which includes Northern California. Another agent covers Southern California. In carrying out her assignments she visits retail travel agents on a daily basis and gives training sessions and seminars to educate the agents about her products. She utilizes video presentations, brochures, fliers and other materials produced for use by the travel agents. SuperClubs ships these materials to her. She estimated that approximately 2,000 travel agencies in Northern California had brochures on Breezes resorts. In addition, she exchanged telefaxes with the Breezes in the Bahamas multiple times each month, the most common reason to alert the hotel "to the fact that there is a VIP coming." She stated that she sold "land only," meaning that she sold the right to stay at a hotel. She also received monthly updates from SuperClubs which gave information about "[p]ainting the walls, new bedspreads, adding a spa, perhaps adding a new block of rooms" or identifying new activities at the hotels. In reviewing and correcting her deposition, Lewis changed her references to "SuperClubs" to "International Lifestyles."

Appellant declared that he was a guest at the Breezes Resort as part of a company-sponsored trip. He learned about the recreational activities offered at

the resort from brochures and literature sent to him and others before they departed. The trip was apparently arranged for his company by an organization called Value Marketing and he was told this location was chosen because of the availability of the many different water-related sports activities, in which he was interested.

The declaration of Hoelsken stated that she dialed a SuperClubs' toll-free telephone number and was told that SuperClubs has an office in Los Gatos, California. She telephoned the California office and received a recording from Lewis stating that she was the Northwest Sales Manager. She also contacted a few travel agencies in California and obtained brochures relating to SuperClubs and Breezes. Copies of the brochures were attached to her declaration.

The first page of the first brochure provides as follows:

> "The music is always playing, the drinks are always flowing and the parties last til dawn. You can learn to sail, windsurf or waterski. You can improve your tennis game. And learn to dance. Or you can do nothing at all. That's the beauty of Breezes. Everything you can eat, drink and do is included in one simple upfront price, and tipping is simply not permitted. And now, even your wedding in paradise is FREE!
>
> "SuperClubs
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> "Breezes
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> "Bahamas
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> ". . .
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> "SuperClubs
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> "The Caribbean's Only Super-Inclusive Resorts
>
> ". . .

"SuperClubs is represented worldwide by International Lifestyles, Inc."

The second page of the first brochure identifies "SuperClubs Breezes -- Bahamas" as "The 1 of 3 Breezes Resorts of the SuperClubs chains. . . ."

In reply to appellant's opposition, respondent filed the declaration of Thomas Trotta, Vice President of the U.S. Finance and Operations of International Lifestyles. Trotta declared that his office is in Hollywood, Florida "at the only corporate office of International Lifestyles" and that his company "is a completely separate corporate entity from VRL International, Ltd. International Lifestyles uses the name 'SuperClubs' with appropriate authorization." He stated that Lewis is a full-time employee of International Lifestyles, and that "International Lifestyles paid directly Ms. Lewis' wages."

Respondent also submitted excerpts from Lewis's deposition, as well as the deposition of Keith Bastian. When asked whether the Breezes resorts are owned by VRL International, Lewis testified, "I don't know who VRL International is." Bastian testified that he operated a jet ski rental business located in a hut behind the Breezes hotel.

The trial court's minute order granting the motion states: "Based on the facts and circumstances of this case, this court lacks general or specific personal jurisdiction over VRL International, a Cayman Island corporation. Any purported advertising by VRL International and/or International Lifestyles is insufficient as a matter of law and does not constitute sufficient minimum contacts. There is no substantial nexus between plaintiff's injuries and the purported advertising. The advertising does not operate to confer jurisdiction over VRL International for the injuries suffered by plaintiff in the course of recreational activities occurring wholly outside the United States."

DISCUSSION

"Personal jurisdiction may be either general or specific. A nonresident defendant may be subject to the *general* jurisdiction of the forum if his or her contacts in the forum state are 'substantial . . . continuous and systematic.' [Citations.] In such a case, 'it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum.' [Citations.] Such a defendant's contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction. [Citation.] . . . [¶] If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still may be subject to the *specific* jurisdiction of the forum, if the defendant has purposefully availed himself or herself of forum benefits [citation], and the 'controversy is related to or "arises out of" a defendant's contacts with the forum.' [Citations.]" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445-446.)

Addressing the issue of *specific* jurisdiction first, we find none. The controversy at issue is a claim for damages for injuries resulting from a jet ski accident which occurred in the Caribbean ocean. While it is true that appellant's visit to the Breezes resort may have resulted from marketing activity as next discussed, there is no evidence of any nexus between the accident and the marketing activity. We cannot conclude that the controversy presented is either related to or arises out of any of respondent's contacts with California.

Turning to the issue of *general* jurisdiction, the evidence does not support a conclusion that respondent itself has any direct contact with, or presence in, California. In fact, the evidence presented by appellant does not establish exactly what role respondent has in the context of this litigation. We can infer that respondent either manages or owns the hotel at which appellant was a guest,

nothing more. But, the undisputed evidence does establish that the Breezes Resorts are actively marketed to travel agents in California through the activities of Lewis and her Southern California counterpart. Thus, general jurisdiction turns on whether these activities are sufficient to visit jurisdiction over respondent. We believe not.

In reviewing the evidence, we must credit factual determinations made by the trial court where the evidence is subject of one or more reasonable inferences in favor of the prevailing party. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.) Additionally, it is appellant's initial burden to present evidence sufficient to justify the exercise of jurisdiction. (*Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 449.)

Under this standard, the evidence does not support a conclusion that either Lewis or her Southern California counterpart was an employee of or controlled by respondent. Rather, the evidence supports the conclusion that these people were agents or employees of International Lifestyles. International Lifestyles is a corporation separate from respondent and is apparently the marketing agent for resorts which utilize the trademark of "Breezes" and the trade name "SuperClubs." The trade name SuperClubs includes "Breezes Resorts" and others, including Grand Lido Resorts, Boscobel Beach and Hedonism Resorts. The two California International Lifestyle agents market these various resorts to travel agents who then deal with clients who *may* book rooms at any of the resorts. The strongest inference to be drawn in favor of appellant from these facts is that respondent retained International Lifestyles to actively market its trademark resorts in the United States, including California, and that it benefited from these activities when customers become guests at one or more of the resorts.

We cannot conclude that this activity is so '"substantial . . . continuous and systematic' . . . [that respondent's] contacts with [this] forum are so

wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction." (*Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at pp. 445-446.)

DISPOSITION

The order granting the motion to quash is affirmed. Costs are awarded to respondent.

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HASTINGS, J.

We concur:

VOGEL (C.S.), P.J.

CURRY, J.